

136 FERC ¶ 61,201
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 22, 2011

In Reply Refer To:
Kinder Morgan Interstate Gas
Transmission LLC
Docket No. RP11-1494-000

Kinder Morgan Interstate Gas Transmission LLC
370 Van Gordon Street
Lakewood, CO 80228

Attention: J. Curtis Moffatt, Attorney for
Kinder Morgan Interstate Gas
Transmission LLC

Reference: Letter Order Approving Uncontested Settlement

Dear Counsel:

1. On November 18, 2010, the Commission initiated a proceeding pursuant to section 5 of the Natural Gas Act (NGA) into the justness and reasonableness of the rates of Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan) and established hearing procedures.¹ In the November 18 Order, the Commission required Kinder Morgan to file a cost and revenue study within 75 days.

2. On May 5, 2011, pursuant to Rule 602 of the Commission's Regulations, Kinder Morgan filed a Stipulation and Agreement of Settlement and related appendices (Settlement). The Settlement will resolve all remaining issues in the above-captioned docket. Among other things, the Settlement provides shippers with a reduction in all stated Fuel and Loss (FL&U) Reimbursement Percentages beginning on June 1, 2011, and an additional reduction in the FL&U Reimbursement Percentages for transportation

¹ *Kinder Morgan Interstate Gas Transmission LLC*, 133 FERC ¶ 61,157 (2010) (November 18 Order), *reh'g granted in part and denied in part*, 134 FERC ¶ 61,061 (2011).

nominations to all delivery points on segments 800, 850, and 900 downstream of the Laton Compressor Station beginning January 1, 2012. The Settlement also requires Kinder Morgan to file a cost and revenue study within four years of the effective date of the Settlement and provides for a one year moratorium on the filing of a rate case from the effective date of the Settlement.

3. The main provisions of the Settlement are summarized immediately below.
4. Article I provides the background and procedural history of the case.
5. Article II sets forth the reduced FL&U Reimbursement Percentages and the periods during which such rates will be effective. This article provides that the reduced FL&U Reimbursement Percentages to be effective June 1, 2011 will be the FL&U Reimbursement Percentages that were in effect March 1, 2011, reduced by twenty-seven percent for each service. The reduced FL&U Reimbursement Percentages to be effective January 1, 2012 for transportation nominations to all delivery points on segments 800, 850, and 900 downstream of the Laton Compressor Station will be the FL&U Reimbursement Percentages that were in effect March 1, 2011 reduced by thirty percent. This article also sets forth the depreciation rates, which represent a continuation of the depreciation rates established in the Offer of Settlement and Stipulation and Agreement approved by the Commission in *KN Interstate Gas Transmission Co.*, 89 FERC ¶ 61,323 (1999).
6. Article III provides that Kinder Morgan will have the right to continue making Annual Charge Adjustment filings pursuant to section 21 of Kinder Morgan's General Terms and Conditions (GT&C) during the Rate Case Filing Moratorium (as defined in Article 6 of the Settlement).
7. Article IV provides that Kinder Morgan will file with the Commission a cost and revenue study no later than four years from the effective date of the Settlement.
8. Article V provides that Kinder Morgan will file to amend section 16.1(a) of the GT&C of its tariff to delete the words "scheduled maintenance." Article V also clarifies the scope of the phrase "making of repairs, alterations or replacements" in Section 16.1(a) of the GT&C of Kinder Morgan's tariff and describes the communication protocol developed by Kinder Morgan and the settling parties that Kinder Morgan will use to communicate with affected shippers about scheduled maintenance. In this article, Kinder Morgan also agrees to not schedule scheduled maintenance during the peak winter months of November through March and, to the extent practicable, will endeavor to perform such scheduled maintenance during shoulder periods.
9. Article VI provides that neither Kinder Morgan, pursuant to NGA section 4, nor any settling party, any successor or assignee (including shippers acquiring capacity by capacity release) or affiliate of any settling party, pursuant to NGA section 5, will seek to

modify Kinder Morgan's base recourse rates or the Settlement Fuel Reimbursement Percentages prior to one year from the effective date of the Settlement. This article also provides that, in the next general NGA section 4 rate case filed by Kinder Morgan, Kinder Morgan will provide certain fuel data and establishes that the refund floor for the FL&U Reimbursement Percentages will be equal to the forty-five percent reduction of the FL&U Reimbursement Percentages in effect on March 1, 2011 for each service. At least 6 months prior to filing such a rate case, Kinder Morgan also agrees to engage with its customers in a series of tariff workshops to discuss the necessary changes to modernize Kinder Morgan's existing tariff. Lastly, this article describes the Parties' agreement on the issues of rolled-in rate treatment and any acquisition premium paid for the purpose of determining the appropriate rate treatment of the costs associated with the Pony Express Pipeline facilities and expressly reserve any and all rights they may have had under the Docket No. RP98-117-000 settlement regarding the appropriate rate treatment of the costs associated with the Pony Express Pipeline facilities.

10. Article VII sets forth the definitions of "Settling Party" and "Contesting Party." The article describes the procedures to follow and the rights of the Settling Parties and Kinder Morgan in the event that the Commission issues an order that materially and adversely affects a Settling Party or Kinder Morgan. The article provides that a Contesting Party is not entitled to any of the benefits or subject to any of the burdens imposed in the Settlement and may be severed from the Settlement.

11. Article VIII provides that Kinder Morgan will not effectuate the first reduction in FL&U Reimbursement Percentages on June 1, 2011, if the Settlement has not been approved by a final Commission order no longer subject to rehearing by such date. The article also provides that Kinder Morgan will not effectuate the second reduction in FL&U Reimbursement Percentages on January 1, 2012, if the Settlement has not been approved by a final Commission order no longer subject to rehearing by such date. The article provides for a crediting mechanism for the difference between the Settlement Fuel Reimbursement Percentages and the billed FL&U Reimbursement Percentages in the event the Settlement is not approved by a final order by the dates specified (i.e., June 1, 2011 and January 1, 2012).

12. Article IX provides that Kinder Morgan will withdraw its petition for review at the United States Court of Appeals for the District of Columbia Circuit pending in Case No. 11-1071 when the Settlement becomes effective.

13. Article X sets forth the criteria which must be met in order for the Settlement to take effect.

14. Article XI provides for the reservations in the Settlement. Among other things, this article provides that the standard of review for any changes to the terms of the Settlement shall be the most stringent standard permissible under applicable law.

15. Black Hills Utility Holdings, Inc., Kansas Corporation Commission (KCC), Kinder Morgan, Commission Trial Staff, SourceGas Distribution LLC, Kansas Gas Service, a Division of ONEOK, Inc., Anadarko Energy Services Company, Tenaska Marketing Ventures, and Process Gas Consumers Group filed initial comments either supporting or not opposing the Settlement. However, in its initial comments, KCC complained that Trial Staff limited the KCC's participation in settlement discussions, pursued a narrow settlement, and presented the settlement precipitously. KCC also complained about Kinder Morgan's refusal to allow state commissions to participate in the tariff workshops described in Article VI of the Settlement.

16. On May 23, 2011, Kinder Morgan and Trial Staff each filed reply comments to KCC's initial comments. In its reply comments, Trial Staff contended that, contrary to KCC assertions, Trial Staff met in person and spoke frequently with KCC and in no way limited or foreclosed KCC from providing constructive and meaningful input into the settlement of this case. Kinder Morgan noted that KCC could intervene as a party in any future proceeding resulting from the workshops and that, if any local distribution company customer requests that Kinder Morgan meet with the KCC to discuss prospective changes to its tariff, it would gladly consider such a request. On May 26, 2011, the KCC filed a Motion for Leave to Answer and Answer to Trial Staff's Reply Comments.

17. On June 9, 2011, the Presiding Judge certified the Settlement to the Commission as uncontested.² In addition, the Presiding Judge denied KCC's Motion for Leave to Answer. The Presiding Judge found that all parties had been provided with a full and fair opportunity for participation, including the opportunity to file initial and reply comments addressing the merits of the terms of the proposed Settlement before the Commission acted upon it. The Presiding Judge also found that, despite KCC's allegations that it was precluded from meaningful participation in the settlement process, the record demonstrates that only Trial Staff elected to engage in discovery and that it was Trial Staff that took the lead in efforts to move the settlement process forward.

18. The Commission finds that the Settlement is fair and reasonable and in the public interest, and therefore, the Commission approves the Settlement pursuant to Rule 602(g), 18 C.F.R. § 385.602(g) (2010).

19. The Commission agrees with the Presiding Judge's decision to deny KCC's Motion for Leave to Answer. As the Presiding Judge found, it appears that all parties had been provided with a full and fair opportunity for participation, including the opportunity to file initial and reply comments addressing the merits of the terms of the proposed Settlement. Further, KCC is identified as one of the thirty-two "Settling Parties" on

² *Kinder Morgan Interstate Gas Transmission LLC*, 135 FERC ¶ 63,015 (2011).

Appendix A to the Settlement and elected not to file comments in opposition to the Settlement. Lastly, while arguably it may be more efficient to allow KCC to participate in the future tariff workshops discussed in the Settlement,³ it is not required. As Kinder Morgan points out, KCC may intervene as a party in any future proceeding resulting from such tariff workshops.

20. This letter order terminates Docket No. RP11-1494-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

³ See, e.g., *Panhandle Eastern Pipe Line Co.*, 77 FERC ¶ 61,284, at 62,261-62,262 (1996).